Supreme Court, U.S.
FILED

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No. 96-_____

In The

Supreme Court of the United States

October Term, 1996

I. PARKER HUFF,
Petitioner,

v.

FIRST NATIONAL BANK of CENTER HALL,
Now Known as:
NORTHWEST SAVINGS BANK,
Respondant.

Petition For A Writ of Certiorari
To The Superior Court Of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

I. Parker Huff, Pro Se

258 Toftrees Avenue #115
State College, Pa. 16803
(814) 237-1984
Petitioner

Dated: November 26, 1996

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12 pp

QUESTIONS PRESENTED

1. Whether, after debtor's 11 U.S.C. § 727 discharge, may unsecured charges or claims made against the debtor, be added to and included in bank's post-discharge petition to amend judgement in mortgage foreclosure, where bank's security agreement (mortgage) does not permit such charges or claims, and state law does not permit such charges or claims, and clearly violates 11 U.S.C. § 524 (a)(1,2), that preempts state court's authority to render said judgement, and is in clear conflict with a multitude of decisions from all circuits protecting and preserving "fresh start" provisions, and the supremacy, due process and equal protection, principles enunciated by this Court.

2. Whether, mortgagee may take actions in mortgage foreclosure, required by state statute, after receiving notice the automatic stay was invoked, and prior to an order lifting stay, when the trial judge found said actions had in fact taken place during the course of the stay, where the subsequent lift stay order was not made retroactive and did not annul or vacate the stay, and clearly violates 11 U.S.C. § 362 (a)(1,2,4,5), and conflicts with numerous decisions from all circuits, and violates of supremacy, due process and equal protection, principles enunciated by this Court in numerous decisions.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, I. Parker Huff, respectfully Prays that a Writ of Certiorari issue to review the judgement and opinion of the Superior Court of Pennsylvania in the proceeding entitled The First National Bank of Centre Hall, Now known as, Northwest Savings Bank -v- I. Parker Huff, and entered on December 21, 1995 with motion to reconsider denied March 1, 1996, and Allowance of Appeal denied by the Supreme Court of Pennsylvania and entered on August 28, 1996.

OPINIONS BELOW

The judgement of the Supreme Court of Pennsylvania Denying Petition for Allowance of Appeals (not reported), and judgement and memorandum of the Superior Court of Pennsylvania (not reported), and denial for Reargument or Reconsideration and the judgements of the Court of Common Pleas of Centre County are reprinted in Appendix A. at 1a - 23a.

JURISDICTION

The judgement of the Superior Court of Pennsylvania was entered on December 21, 1995. The Superior Court of Pennsyl-

vania denied timely request for the reargument on March 1, 1996. Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was timely filed on April 1, 1996 and Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was denied on August 28, 1996. This petition is filed within ninety days of entry of that Order. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article 1, Section 8, Clause 4: "To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States."

United States Constitution Amendment 5: "No person shall be ... nor be deprived of life, liberty, or property, without due process of law."

United States Constitution Amendment 14, Section 1: "... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction

the equal protection of the laws."

11 U.S.C. § 362(a)(1,2,4,5):

> "(a) ... a petition filed under section 301, 302, or 303 of this title ... operates as a stay, applicable to all entities, of--
>
> (1) the commencement of continuation, including the issuance or employment of process,of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (2) the enforcement, against the debtor or against property of the estate, of a judgement obtained before the commencement of the case under this title;
>
> (4) any act to create, perfect, or enforce any lien against property of the estate;
>
> (5) any act to create, perfect, or enforce against property of

the debtor any lien to the extent that such a lien secures a claim that arose before the commencement of the case under this title:"

11 U.S.C. § 524(a)(1,2):

"(a) A discharge in a case under this title-

(1) voids any judgement at any time obtained, to the extent that such judgement is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived;"

STATEMENT OF THE CASE

This case presents two important questions of federal civil law, both of which, the state court decided in a manor that directly conflicts with relevant decision of this Court. The facts necessary to presenting these issues and questions may be briefly stated as follows:

Overview prior to judgements in question

I. Parker Huff, purchased two large parcels of real property located in Centre County, Pennsylvania, and executed a mortgage to the First National Bank of Centre Hall, now known as Northwest Savings Bank. After four years of subdividing and developing the real property, Huff defaulted and the bank instituted an action in mortgage foreclosure on March 17, 1989, and obtained a default judgement for $162,175-.04 on May 4, 1989.

On June 4, 1990, Huff filed a Chapter 11 Petition in Bankruptcy (Docketed at 1-90-00917RJW). From, June 1990 through June 18, 1993, the Bank filed adversarial actions in Bankruptcy Court to further their position and prevent Huff from reorganizing and subdividing his real property. On June 18, 1993, the Bankruptcy Court granted an order lifting the automatic stay, and on June 24, 1993, Huff was Granted

Discharge in Bankruptcy.

Action in violation of 11 U.S.C. § 524 (a)(1,2)

On August 5, 1993, the Bank filed petition to amend their pre-petition judgement of May 4, 1989. In their petition, they set forth several claims for cost and fees not available pursuant to their security interest (mortgage contract), which are also barred by 41 P.S. § 406 and are void by 11 U.S.C. § 524 (a)(1,2). More specifically, these unlawful claims are discussed in detail in Point Number I, below.

On September 13, 1993, Huff answered the petition and filed new matter setting forth discharge in bankruptcy as affirmative defense to the Bank's attempt to "perfect", discharged unsecured personal claims against Huff and/or his property. On September 17, 1993, the trial court granted the amended judgement in the amount of $237,469.74, and included all of the claims for costs and fees that violate 11 U.S.C. § 524 (a)(1,2).

Then, on October 4, 1993, Huff filed a petition to strike off the amended judgement, setting forth his affirmative defense of discharge in bankruptcy, and the violations of 11 U.S.C. § 524 (a)(1,2)

by the trial court in granting the amended judgement. The trial court once again ignored the violations of 11 U.S.C. § 524 (a)(1,2) and denied Huff's petition to strike on November 9, 1993.

The violation of 11 U.S.C. § 362 (a)(1,2,4,5)

In March, 1994, the bank proceeded, to execute on the amended judgement. With no alternative left to halt the bank's execution, Huff filed a petition in bankruptcy in Harrisburg, Pennsylvania at Docket No. 1-94-00633RJW on April 22, 1994. Huff notified both the bank and sheriff by telephone and hand delivering a copy of the petition.

The bank filed a motion to dismiss or vacate order for relief and a motion to lift the automatic stay and notices were mailed and hearing was set for June 6, 1994, by the court. Instead of obeying the automatic stay, the bank and the sheriff went forward with the statutory requirement in foreclosure, of publishing three newspaper advertisements (on April 27, May 4 & 11) in direct violation of 11 U.S.C. § 362 (a)(1,2,4,5). On May 18, 1994, the bank requested an emergency phone conference between their counsel, Judge Woodside and Huff in an effort to expedite their motion and on May 19, 1994 the court lift

ed the stay but did not dismiss Huff's bankruptcy.

The bank went forward with the execution sale, and Huff timely filed a petition to set aside the sheriff's sale, setting forth the conflicts in notices, the existence and operation of the automatic stay, the legal nullity of the advertising and publication. On July 28, 1994, after a finding of fact that the publication of the advertizing did occur during the existence of the automatic stay and the petition to set aside was timely, the trial court ignored 11 U.S.C. § 362 (a) (1,2,4,-5), and denied the petition to set aside. Details of these conflicts and the significance thereof are set forth in Point Number II, below.

This Petition for Writ of Certiorari promptly follows.

REASONS FOR GRANTING THE WRIT

I. Section 524 (a)(1,2) absolutely enjoins creditor's inclusion of unsecured discharged claims in action to obtain judgement on security interest.

The federal question arises, when the state appellant court affirms a trial

court's judgement, where 11 U.S.C. § 524 (a) (1,2) clearly prohibits any action taken on unsecured discharged claims set forth in a petition, and preempts the trial court's authority to grant the judgement, and the trial court grants the judgement anyway.

When an action to obtain a judgement is permanent enjoined by operation of 11 U.S.C. § 524 (a)(1,2), any judgement granted by that action is void. This is a fundamental principle of the "Fresh Start" provisions of the Bankruptcy Code. Without this principle, exemptions would be meaningless, and discharge in bankruptcy would be almost worthless.

On August 5, 1993, the Bank filed a Petition to amend their judgement in the Court of Common Pleas in Centre County. In addition to claims available under the security interest (mortgage), paragraphs five and seven and Exhibits "C" & "D", of their petition, set forth claims that could only be claims against Huff personally and are NOT claims available to the Bank under their security interest. (Relevant paragraphs from Huff's mortgage are set forth in Appendix B at 1b).

Further, in the Bank's Exhibit "C" to their Petition to Amend Judgement, sets forth eight (8) copies of checks from

1/7/91 through 5/27/93, for payment of such claims that could only be claims against Huff personally including consulting fees, transcription fees, appraisers fees, insurance fees and legal fees all arising from adversarial action in Federal Bankruptcy Court from June 13, 1990 through May 27, 1993. (Relevant excerpts from the Petition to Amend Judgement are set forth in Appendix B at 4b).

And, Exhibit "D" of the Bank's petition contains thirty-four (34) itemized charges occurring from January 18, 1993 through July 19, 1993, ALL, in the form of a bills for legal fees and expenses of adversarial actions in Federal Bankruptcy Court. None of fees included in the eight payments in Exhibit "C" or the thirty-four charges in Exhibit "D" are taxable under the bank's mortgage pursuant to 41 P.S. § 406:

> "With regard to residential mortgages, no residential mortgage lender shall contract for or receive attorney's fees from a residential mortgage debtor except as follows... (2) Upon commencement of foreclosure or other legal action with respect to a residential mortgage, attorney's fees which are reasonable and actually incurred by

> the residential mortgage lender may be charged to the residential mortgage debtor."

These claims arise from adversarial actions in bankruptcy court, are billed as bankruptcy proceedings, and correspond to the twenty-six (26) docket entries at 1-90-00917RJW from 7-2-90 through 6-24-93 on behalf of the bank. (The relevant entries are listed in Appendix B at 14b). During the same three years no actions were taken in state court, likewise no docket entries were made in state court at 89-598 during the same time.

While taxable claims available under a mortgage must clearly be enumerated within the mortgage document, the authority in Pennsylvania as to any "other legal action" is well defined by *Vitelli* and *Schwartz* bankruptcy decisions as follows:

> "Term "other legal action" in section of Pennsylvania law providing that mortgagee may recover attorney fees only in connection with foreclosure or "other legal action" refers only to legal proceedings to enforce mortgage obligation in manner of foreclosure action, and not to matter filed to attempt to advance mortgagee's position in

> bankruptcy court." 41 P.S. § 406.---*In re Vitelli*, 93 B.R. 889.;
>
> "Phrase "other legal action" in this section does not include contested matter in bankruptcy court to obtain relief from automatic stay; thus, attorney fees recoverable from debtor in connection with relief from stay action were limited under Act to $50." *In re Schwartz*, Bkrtcy. E.D.Pa.1986, 68 B.R. 376.

These claims by the Bank, are purely efforts to circumvent the effect of 11 U.S.C. § 524 (a)(1,2) in an unartful attempt to secure, unsecured discharged personal claims against Huff via the Bank's Petition to Amend Judgement in state court. Where in ordinary circumstances the trial court would generally have the authority to render this judgement, in the absence of bankruptcy. However, this is clearly not the case. As held in this Court:

> *KALB et ux. v. FEUERSTEIN et ux. KALB v. LUCE et al.*, 60 S.Ct. 343 at 346, "It is generally true that a judgement by a court of competent jurisdiction bears a presumption of regularity and

> is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally... The States cannot, in the exercise of control over local laws and practice, vest State courts with power to violate the supreme law of the land. The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, State or Federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law..."

The state trial court and appellate court simply "did not" and "does not" have the "power or authority" to "render this particular judgement". From 46 Am Jur 2d, § 24:

> "There are in general three ju-

> risdictional elements in every valid judgement: (1) the power or authority of the court to render the particular judgement; (2) jurisdiction of the subject matter; and (3) jurisdiction of the person."

The trial and appellate courts have clearly over stepped their authority where Congress has clearly stated it's intent to preserve and protect 11 U.S.C. § 524 (a)-(1,2) and the "Fresh Start" principles. As stated by this Court:

> "Preemption may be either express or implied, and is compelled whether Congress' command is explicitly stated in statute's language or implicitly contained in its structure and purpose; Court looks to congressional intent." *FMC Corp. v. Holliday*, 111 S.Ct. 403, 112 L.Ed.2d 356, appeal after remand 932 F.2d 959.

In, 30 Am Jur 2d § 56, "In any event, however, an execution based on an unauthorized amendment of a judgement cannot stand." *Scamman v. Bonslett*, 118 Cal. 93, 50 P 272,

And, finally from this Court:

"The general rule is that an execution may not issue upon a void judgement. An execution so issued is itself absolutely void and such invalidity extends to acts performed under the writ." *Lamaster v. Keeler*, 123 US 376, 31 L Ed. 238, 8 S Ct. 197.,

The conflict between state court judgement and the supremacy of federal in this matter is real. The need for review is obvious.

II. Acts committed during Section 362 stay are void and not voidable.

There are a multitude of federal questions that arise in even the smallest bankruptcy case, when state trial and appellant courts view Section 362 stay as voidable, not applicable or worse ignore it. Thus, the automatic stay is, in Congress's words "...is one of the fundamental debtor protection provided by the bankruptcy laws...stay also provides creditor protection..."

The federal question that arises here is when the state trial judge found in his findings that:

> "Advertising for the Sheriff's Sale appeared in the Centre

> Daily Times on or about April 27, May 4 and May 11, 1994... Thus, all actions taken in the process of notice, except for actual publication of the newspaper ads, were conducted prior to Huff's bankruptcy petition of April 22, 1994." (Appendix A at 13a)

in fact the sheriff did conduct the statutory requirement of publishing advertisements during the existence of the Section 362 stay, then chose to ignore his finding when granting judgement and the appellate court affirmed the judgement.

When the Bank decided to move forward with execution on their amended judgement in April 1994, Huff filed a second Chapter 11 Petition in Bankruptcy Docketed at 94-00633RJW, on April 22, 1994, and the Automatic Stay was invoked (Relevant excerpts of docket entries are set forth in Appendix B at 19b). While the automatic stay was in effect, the sheriff proceeded to publish newspaper notices required under Pennsylvania statute in violation of the automatic stay pursuant to 11 U.S.C. § 362.

> *In re: SCHWARTZ*, 954 F.2d. 569 (9th Cir. 1992) at 571, "Our decision today clarifies this

area of the law by making clear that violations of the automatic stay are void, not voidable. See *In re Williams*, 124 B.R. 311, 316-318 (Bankr.C.D.Cal-1991) ... If violations of the stay are merely voidable, debtors must spend a considerable amount of time and money policing and litigating creditor actions. If violations are void, however, debtors are afforded better protection and can focus their attention on reorganization ... Section 362(d), a subsection of the automatic stay provision, gives the bankruptcy court the power to grant creditors relief from the stay. It provides in part: On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay ... 11 U.S.C. § 362(d) (1988). Thus, section 362 gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay. 2 Collier on Bankruptcy,

§ 362.07 (15th ed. 1984) ..."

The bank filed a motion to dismiss or vacate order for relief and a motion to lift the automatic stay on April 28, 1994 and hearings were set for June 6, 1994.

The sheriff continued with publications on April 27, May 4, and May 11, 1994 advertising a sale for May 24, 1994.

The Bankruptcy Court did not lift the stay until May 19, 1994 which was after the mailing and posting of the statutory notices of the hearings set for June 6. Since the lift stay order issued by the Bankruptcy Court was not retroactive, was not vacated and was not annulled, all statutory acts taken by the Sheriff of Centre County during the course of the existence of the Automatic Stay remain a legal nullity and as such do not exist.

As a result, state statutory requirements to create a valid sheriff's sale were never met, thus render the sale defective and void.

Huff timely filed a Petition to Set Aside Sheriff's Sale and Exceptions (Relevant excerpts from Petition are set forth in Exhibit B at 11b), as found by the trial judge at Appendix A at 15a:

> "Without further evidence of a specific delivery time by the Sheriff, together with the fact that the Petition was recorded some seven (7) hours before the deeds, this Court is unable to find that Huff's Petition was not timely filed."

pursuant to Pa.R.C.P. Rule No. 3132, setting forth the operation of the Federal Bankruptcy Law Section 362, as found by the trial judge at Appendix A at 12a:

> "On April 22, 1994, Huff filed a voluntary petition in bankruptcy in the United States Bankruptcy Court for the Middle District of Pennsylvania. An automatic stay was invoked upon filing."

and the defects under Pennsylvania Statute,and that no title could transfer, and as such, a Sheriff's deed is empty and void.

The conflict is very clear, the public receives the following:

1. Notice on April 22 from bankruptcy court of automatic stay beginning on April 22.

2. Notice on May 4 from bankruptcy court of hearing of lift stay motion on June 6.

3. Newspaper ads on April 27, May 4 & 11 of sale on May 24.

4. No notice of telephone conference on May 18 and judge lifts stay May 19 with no notice.

Clearly, the holding that subject-matter jurisdiction can co-exist simultaneously in both Federal Bankruptcy Court and State Court on the same matter and same issue is contrary to public policy and constitutional law. The conflict is self evident on the face of the record. This matter clearly needs to be corrected, by Writ of Certiorari to Superior Court of Pennsylvania.

CONCLUSION

For the reasons stated herein, this Petition for Writ of Certiorari should be granted. The supremacy clause cannot be disputed, the preemption demonstrated in the present Petition is both express and implied in both statute and Congressional intent. Because of the decisions below conflict with federal laws empowered by the Constitution and demonstrate the state court's willfulness to grant unlawful and

void judgement, the record clearly needs reviewed.

Respectfully submitted,

I. Parker Huff

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Dated: November 26, 1996

APPENDIX A

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J. A40049/95

IN THE SUPERIOR COURT OF PENNSYLVANIA

THE FIRST NATIONAL	: No. 00810
BANK of CENTRE HALL	: HARRISBURG, 1993
	: No. 00583
	: HARRISBURG, 1994
-v-	:
	:
I. PARKER HUFF,	:
Appellant,	:

Appeals from the Orders of the Court of Common Pleas, Centre County, Civil Division, at No. 89-598.

Judgement

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgement of Court of Common Pleas of CENTRE County be, and the same is hereby AFFIRMED.

BY THE COURT:
/s/ David A. Szewczak
PROTHONOTARY

Dated: Dec. 21, 1995

IN THE SUPERIOR COURT OF PENNSYLVANIA

THE FIRST NATIONAL	:	No. 00810
BANK of CENTRE HALL	:	HARRISBURG, 1993
	:	No. 00583
-v-	:	HARRISBURG, 1994
	:	
I. PARKER HUFF,	:	
Appellant,	:	

Appeals from the Orders of the Court of Common Pleas, Centre County, Civil Division, at No. 89-598.

BEFORE: POPOVICH, SAYLOR and BROSKY, JJ.

MEMORANDUM: Filed Dec. 21, 1995

These are consolidated appeals from two separate Orders of the court of common pleas of Centre County. The appeal filed at No. 810 Harrisburg, 1993, is from the Order denying appellant's Petition to strike off an Amended Judgement in a mortgage foreclosure action initiated by appellee. The appeal docketed at No. 583 Harrisburg, 1994, is from the Order denying appellant's Petition to set aside Sheriff's sale and Exceptions to proposed distribution pursuant to the same action in mortgage foreclosure.

Relative to the appeal filed at No. 810 Harrisburg, 1993, appellant, who is

proceeding pro se, questions the propriety of the grant of the amended judgement on tho basis that the proceeding was in personam, rather than in rem, and was granted after appellant's discharge in bankruptcy.

With regard to the appeal docketed at No. 583 Harrisburg, 1994, appellant, again proceeding pro se, maintains that the Sheriff's sale conducted in the mortgage foreclosure proceeding should be set aside because the automatic stay issued pursuant to 11 U.S.C. § 362 of the Bankruptcy Code was still in effect at the time the properties in question were advertised for sale. We affirm both Orders.

Appellee initiated an action in mortgage foreclosure on properties purchased by appellant in Centre County after appellant had defaulted in his mortgage payments. Prior to execution on the judgement obtained by appellee, appellant filed a Petition in bankruptcy in the United States Bankruptcy Court for the Middle District of Pennsylvania. Appellant obtained relief in the form of an automatic stay pursuant to Section 362 of the Bankruptcy Code, 11 U.S.C. Subsequently, appellee filed a Petition to lift the stay. The Petition was granted on the basis that appellant had no equity in the mortgaged real estate because of his default and also because appellant had failed to dem

onstrate that appellee's interests could be protected. Appellant was subsequently discharged as to all debts on which he had incurred personal liability, but he was not discharged as to those debts which are non-dischargeable pursuant to the Bankruptcy Code. Afterwards, appellee sought to amend the original judgement obtained because the latter did not reflect the principal amount owing, since appellant made no payments during the course of the bankruptcy litigation, and did not reflect accrual of interest, counsel fees and court costs.

Appellant maintains that his discharge acts as a bar to any further proceedings on the judgement because he deems these proceedings to be in personam rather than in rem. "An action in mortgage foreclosure is strictly an in rem action.... The sole purpose of a judgement obtained through mortgage foreclosure is to effect a judicial sale of the mortgaged real estate...and the judgement obtained in a mortgage foreclosure action is only in rem." Insilco Corporation v. Rayburn, 374 Pa. Super. 362, 368, 543 A.2d 120, 123 (1988). The discharge Order of the United States Bankruptcy Court provides in part:

> It appearing from the record that the above-named debtor is entitled to a discharge, IT IS

ORDERED:

> 1. The debtor is released from all personal liability for debts existing on the date of commencement of this case, or deemed to have existed on such date....
>
> 2. Any existing judgement or any judgement which may be obtained in any court with respect to debts described in paragraph 1 is null and void as determination of personal liability of the debtor....

(Emphasis supplied). An action in mortgage foreclosure is deemed not to be an action upon the personal liability of appellant, id., and the judgement sought to be amended was that originally obtained in the mortgage foreclosure action. Therefore, appellees have not proceeded against appellant in personam. Moreover, appellee was within its rights to petition to amend the judgement to include interest and costs which had accrued during the time of the automatic stay in the bankruptcy proceeding when appellant did not make any payments on the mortgage. Chase Home Mortgage Company v. Good, 370 Pa. Super. 570, 537 A.2d 22 (1988). Appellant's first issue is without merit.

The appeal filed at No. 583 Harrisburg 1994 is subject of appellant's second issue in which he maintains that the advertisement of the real estate sale after he obtained an automatic stay pursuant to 11 U.S.C. §362 was null and void.

Appellant filed his second petition in bankruptcy on April 22, 1994. On May 18, 1994, appellee petitioned the United States Bankruptcy Court for the Middle District of Pennsylvania for relief from the automatic stay granted to appellant upon the filing of his bankruptcy petition. After hearing, and on May 19, 1994, the United States Bankruptcy Court granted appellee's Motion for relief. The United States District Court for the Middle District of Pennsylvania affirmed the Order lifting the automatic stay on May 23, 1994. Advertisement of the Sheriff's sale of the real estate in question appeared in the Centre Daily Times on or about April 27, 1994, May 4, 1994, and May 11, 1994. Notification of the sale was also posted on the property on April 4, 5 and 6, 1994. Notice of the Sheriff's sale was given to all parties listed on the Affidavit required by Pa.R.Civ.P. 3129.1 on or about April 14, 1994. On May 24, 1994, the Sheriff's sale was conducted, and the properties were sold. On June 13, 1994, the Sheriff of Centre County executed and acknowledged the deeds to the two pieces

of property.

Appellant now complains that the advertisement of the properties after the invocation of the automatic stay makes the subsequent sale which occurred after the stay had been lifted null and void. We do not agree. The Order of the bankruptcy court of May 19, 1994, provided in pertinent part: ""[I]t is hereby ORDERED that. . . the Sheriff's Sale of the Property set for May 24, 1994, shall proceed as scheduled." (Emphasis supplied). From a reading of his Brief, we are unsure why appellant thinks that the automatic stay would bar the Sheriff from advertising the properties in question for sale. However, we believe that his claim may be based upon lack of or improper notice, and we will proceed along the lines of this assumption.

A similar issue was addressed by this court in Workingmen's Savings and Loan Assn. v. Kestner, 438 Pa. Super. 186, 652 A.2d 327 (1994). There, the Kestner's argued that the automatic stay provisions of 11 U.S.C. §362 vitiated the authority of the Sheriff to proceed with the execution of the property in question when the sale of their property had been set prior to their filing for bankruptcy and the invocation of the automatic stay. The Kestner's maintained that any execution after

the lifting of the automatic stay must begin anew with proper notice pursuant to Pa.R.Civ.P. 3129.3(b). That Rule provides that if a new sale date is set within one hundred days of the one postponed, adjourned, stayed or continued and announcement is made of the new sale date to the bidders convened on the date of the original sale, no new notice is required. We rejected the Kestners' argument and held that the postponement of a sale of real estate pursuant to a mortgage foreclosure proceeding does not violate the automatic stay provision of Section 362 of the Bankruptcy Code. We further held that notice of postponement merely preserves the status quo between the creditor and the debtor.

First, we are not faced with an actual postponement, continuance or adjournment to a new date. Nevertheless, the principle gleaned from the holding of Kestner is still applicable here. Although the sale was stayed by invocation of Section 362, the date thereof was not changed by the lifting of the stay. Therefore, appellant's argument fails if his reason for objecting to the advertisement of the properties is because of some lack of further notice after the stay had been lifted. The stay merely preserved the status quo. Secondly, and more pertinently, no new notice was required, in any

event, pursuant to the provisions of Pa. R.Civ.P. 3129.3 (a): "Except as provided by subdivision (b) or special order of court, new notice shall be given as provided by Rule 3129.2 if a sale of real property is
stayed, continued postponed or adjourned." (Emphasis supplied.) We deem the Order of the United States Bankruptcy court to be a special order of court as contemplated by the Rule. That Order provided that the Sheriff's sale set for May 24, 1994, proceed as scheduled, i.e., that the sale take place on May 24, 1994, as originally set. Therefore, no further or new notice was required.

Orders affirmed.

J-A40049-95

IN THE SUPERIOR COURT OF PENNSYLVANIA

THE FIRST NATIONAL	: No. 00810
BANK of CENTRE HALL	: HARRISBURG, 1993
	: No. 00583
-v-	: HARRISBURG, 1994
	:
I. PARKER HUFF,	:
Appellant,	:

ORDER OF COURT

The court hereby denies the application filed January 4, 1996 requesting reargument or reconsideration of the decision dated December 21, 1995.

PER CURIAM

DATE: February 29, 1996

TRUE AND CORRECT COPY
ATTEST 3/1/96
/s/ Patricia A. Whittaker, Chief Clerk
Superior Court of Pennsylvania

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

THE FIRST NATIONAL BANK of CENTRE HALL Respondent,	: No. 210 & 211 : Middle District : Allocatur Docket : 1996
-v-	:
I. PARKER HUFF, Petitioner,	: Petition for : Allowance of : Appeal from : Superior Court

O R D E R

PER CURIAM:

AND NOW, this 27th day of August, 1996, the Petitions for Allowance of Appeal are hereby DENIED.

TRUE & CORRECT COPY
ATTEST: AUG 28 1996
/s/ JOAN L. STEHULAK, ESQUIRE
DEPUTY PROTHONOTARY

SEAL OF THE SUPREME COURT
OF PENNSYLVANIA 1722

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA - MORTGAGE FORECLOSURE

FIRST NATIONAL BANK of CENTRE HALL, Plaintiff	:	
-v-	:	No. 1989-598
I. PARKER HUFF, Defendant	:	

OPINION AND ORDER

Grine, J.

Presently before the Court is Defendant's ("Huff") Petition to Set Aside Sheriff's Sale and Exceptions to Proposed Distribution [Pa.R.C.P. 3132].

Procedural History/Factual Background

On April 22, 1994, Huff filed a voluntary petition in bankruptcy in the United States Bankruptcy Court for the Middle District of Pennsylvania. An automatic stay was invoked upon filing. The Plaintiff, First National Bank of Centre Hall ("Bank"), filed for relief from the automatic stay on April 28, 1994. On May 18, 1994, a telephone hearing was conducted by Bankruptcy Judge Robert Woodside on the

Bank's Motion for Relief from the automatic stay. An order granting the Bank's Motion was entered May 19, 1994. In an order dated May 23, 1994, Judge McClure affirmed the lifting of the automatic stay on appeal. Advertising for the Sheriff's Sale appeared in the Centre Daily Times on or about April 27, May 4 and May 11, 1994. Further, the land in question was posted with notification of the sale on April 4, 5 and 6, 1994, and notice of the Sheriff's Sale was served by counsel for the Bank on all parties listed in the Rule 3129 Affidavit, on or about April 14, 1994. Thus, all actions taken in the process of notice, except for actual publication of the newspaper ads, were conducted prior to Huff's bankruptcy petition of April 22, 1994. The Sheriff's Sale was conducted on May 24, 1994, and parcel number 17-4-033 was purchased by non-party bidder Ginger Breon for $245,000 plus poundage. Parcel number 17-4-058 was purchased by the Bank for $2,267.71 plus poundage. On July 13, 1994, the Sheriff of Centre County executed and acknowledged the deeds to the two parcels. These deeds were recorded at or about 3:00 p.m. on June 14, 1994. Huff's Petition to Set Aside was filed on June 14, 1994, at 8:06 a.m.

Discussion

In his Petition Huff advances several

arguments in support of setting aside the Sheriff's Sale. Huff argues that advertising of the sale, as required by Pa. R.C.P. 3129.2(d), was a legal nullity by virtue of the automatic stay, thus rendering the sale improper. Secondly, Huff argues that the sale price, presumably on parcel 17-4-58, was grossly inadequate. Finally, that the Sheriff's proposed distribution awarding the Plaintiff attorney's fees was improper. The Bank asserts in its New Matter that the Defendant's Petition is untimely pursuant to Pa.R.C.P. 3132, claiming it was not filed prior to the delivery of the Sheriff's deeds to the real property.

This Court will address each argument and will begin with the issue raised in the Bank's New Matter, as a determination on this point is foundational to the rest of the claim. Pa.R.C.P. 3132 states:

> Upon petition of any party on interest before delivery of the personal property or if the sheriff's deed to real property, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances.

The language of the statute is clear,

however, what constitutes delivery of a deed under these circumstances is not as clear. The Bank contends that the Sheriff executed and acknowledged the deeds on June 13, but for whatever reason the deeds were not recorded until 3:00 p.m. on June 14, 1994. Huff's Petition was recorded at 8:06 a.m. on June 14, 1994. Thus, the actual moment of delivery of the deeds is unknown. While the date of execution and acknowledgement of the deeds is evidence of an intent to deliver, it is not proof of any specific delivery. Without further evidence of a specific delivery time by the Sheriff, together with the fact that the Petition was recorded some seven (7) hours before the deeds, this Court is unable to find that Huff's Petition was not timely filed.

Defendant Huff claims in his Petition that the automatic stay rendered the advertising of the sale void, thus violating Pa.R.C.P. 3129.2(d). The Bank points out that Huff does not allege that the notice requirements of 3129.2 were not followed, but rather that the actions taken were made void by the existence of the stay. However, all relevant parties under Pa.R.C.P. 3129.2 were notified by mail before the date of the stay, the premises were posted before the stay, while the newspaper advertisements were published while the stay was in effect. It is true that

when a sale is stayed, continued, post poned, or adjourned to a new date, new notice is required. Pa.R.C.P. 3129.3. In the case-at-bar however, an order lifting the stay, and specifically allowing the sale to proceed on its original date was issued on May 19, 1994, by Judge Robert Woodside. Thus, the date of the sale was not modified, and all other requirements of notice under Rule 3129 were met. Huff cites no precedent to persuade this Court to declare that notice as to the Sheriff's Sale was invalid, thereby voiding the sale. This Court finds that the sale notice was valid, thereby rendering the Sheriff's Sale proper.

Huff further avers in the Petition that the sale should be set aside on the basis of gross inadequacy of the sale price. However, Huff does not, either in Petition or in the supporting brief, go into any detail regarding the value of the land or why the sale price was grossly inadequate. A determination of gross inadequacy of price sufficient to set aside Sheriff's Sale cannot be made, absent evidence of actual or estimated value of property sold. Greater Pittsburgh Business Development Corp. v. Brownstein, 390 Pa. Super. 454, 568 A.2d 1261 (1989). In the case-at-bar, this Court is aware of a mortgage amount of $150,000 held by the Bank on both parcels 17-4-033 and 17-4-

058. Parcel 17-4-033 was sold to Ginger Breon for approximately $245,000. Parcel 17-5-58 was sold to the Bank for approximately $2,267.71. Presumably Huff is alleging the sale price of 17-4-058 only to be grossly inadequate. No evidence is given, neither by appraisal or otherwise, however as to the actual or estimated value of parcel 17-4-058 alone. Without the benefit of such evidence this Court cannot determine the sale price to be grossly inadequate.

Finally, Defendant Huff argues that the Sheriff's proposed distribution awarding attorney's fees to the Bank on the mortgage foreclosure was improper. This argument must fail because this Court can find no evidence of a disbursement from the Sheriff to the attorney for the Bank. Huff owes attorney's fees in connection with this action as a result of an Order of this Court dated September 17, 1993. The Bank did not collect these attorney's fees through the foreclosure proceeding, and thus no amendment of the Sheriff's distribution of proceeds is necessary.

ORDER

AND NOW, this 28th day of July, 1994, Defendant's Petition to Set Aside Sheriff's Sale and Exceptions to Proposed Distribution [Pa.R.C.P. 3132] is hereby

DENIED.

BY THE COURT:

/s/ David E. Grine
Judge

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

FIRST NATIONAL BANK of CENTRE HALL, Plaintiff	:	
-v-	:	No. 1989-598
I. PARKER HUFF, Defendant	:	

ORDER

AND NOW, November 5, 1993, Defendant's Petition to Strike Off Amended Judgement is DENIED.

BY THE COURT:
/s/ David E. Grine
Judge

Filed Nov. 9, 1993
David L. Immel
Prothonotary
Centre County, Pa.

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

FIRST NATIONAL BANK of CENTRE HALL, Plaintiff	:	
-v-	:	No. 1989-598
I. PARKER HUFF, Defendant	:	

OPINION IN SUPPORT OF ORDER OF NOVEMBER 5, 1993

On November 5, 1993, this Court entered an Order denying Defendant's Petition to Strike Off Amended Judgement. On October 4, 1993, Defendant petitioned this Court to strike off the amended judgement entered against him on September 17, 1993, in the amount of $237,469.74 in favor of The First National Bank of Centre Hall. Defendant argues the Amended Judgement seeks to impose a personal liability against him which has already been discharged by order of the United States Bankruptcy Court for the Middle District of Pennsylvania dated June 24, 1993. The Amended Judgement states as follows:

> The Prothonotary of Centre County is directed to amend judgement

> entered against the Defendant, I. Parker Huff, at No. 89-598, in favor of the Plaintiff, The First National Bank of Centre Hall, to reflect judgement for foreclosure of the premises and in the amount of $237,469.74, plus contractual interest from September 16, 1993, along with costs and attorney's fees incurred from September 16, 1993, until paid in full.

On June 18, 1993, the Bankruptcy Court for the Middle District of Pennsylvania entered an order granting the First National Bank of Centre Hall relief from automatic stay. The automatic stay was lifted with respect to the real property of the estate in which the Bank possessed a perfected security interest. After relief from automatic stay was granted, the Defendant was granted a discharge of all personal liability from all debts and existing judgement. Contrary to Defendant's belief, we find the First National Bank of Centre Hall is not seeking to impose personal liability against the debtor, rather it is seeking a mortgage foreclosure classified as an action in rem. 22 Standard Pa. Practice 2d, Section 121.23 (1984). An action in mortgage foreclosure does not include an action to enforce a personal liability. Id. at Sec

tion 121.25. The holder of a bond and mortgage can proceed in rem to enforce his claim, and may proceed by an action of mortgage foreclosure. Bank of Pennsylvania v. G-N Enterprises, Inc., 316 Pa.Super. 367, 463 A.2d 4 (1983). We may infer from the Amended Judgement that the First National Bank of Centre Hall is seeking only to proceed against the real estate pledged by the Defendant to secure the mortgage. This is consistent with an action in rem. Additionally, the June 18, 1993, Order of the Bankruptcy Court of the Middle District of Pennsylvania sanctioned such an amended judgement by lifting the automatic stay in order for the Plaintiff to proceed with a mortgage foreclosure. Accordingly, by Order of this Court dated November 5, 1993, Defendant's Petition to Strike Off Amended Judgement was denied.

BY THE COURT:
/s/ David E. Grine
Judge

Dated: 1-27-94

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

FIRST NATIONAL BANK of CENTRE HALL, Plaintiff	:	
-v-	:	Case No. 89-598
I. PARKER HUFF, Defendant	:	Mortgage Foreclosure

ORDER

AND NOW, to-wit, this 17th day of September, 1993, upon consideration of the Petition to Amend Judgement filed on behalf of The First National Bank of Centre Hall, said Petition be, and the same hereby is, GRANTED. The Prothonotary of Centre County is directed to amend the Judgement entered against defendant I. Parker Huff, at No. 89-598, in favor of the plaintiff The First National Bank of Centre Hall, to reflect judgement for foreclosure of the premises and in the amount of $237,469.74, plus contractual interest from September 16, 1993, along with costs and attorney fees incurred from September 16, 1993, until paid in full.

/s/ David E. Grine
J.

APPENDIX B

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Relevant paragraphs from mortgage from I. Parker Huff to First National Bank of Centre Hall, Dated November 21, 1985..... 1b

Relevant excerpts from Petition to Amend Judgement..... 4b

Relevant excerpts from Petition to Set Aside Sheriff's Sale and Exceptions to Proposed Distribution.... 11b

Excerpts from United States Bankruptcy Court in and for The Middle District of Pennsylvania Docket for Case No. 90-00917RJW - I. Parker Huff Debtor..... 14b

Excerpts from United States Bankruptcy Court in and for The Middle District of Pennsylvania Docket for Case No. 94-00633RJW - I. Parker Huff Debtor..... 19b

Relevant paragraphs from mortgage from I. Parker Huff to First National Bank of Centre Hall, Dated November 21, 1985 and Recorded in the Recorder of Deeds Office in Centre County, Pennsylvania at Deed Book 341 Pages 966-969.

* * *

And it is further understood and agreed, that the said part Y of the first part, his heirs and assigns, will pay all taxes, municipal assessments and charges from time to time assessed against or upon said mortgaged premises forthwith when the same become due and payable, and will keep the buildings erected upon the said premises insured in some good and reliable incorporated stock insurance company or companies to the amount of at least _____-__(left blank)_____ Dollars, and the policy or policies shall be assigned to and held by the said party of the second part, its successors or assigns, as collateral security for the payment of moneys secured hereby; and, in case said part Y of the first part, its heirs or assigns, shall neglect to procure such insurance, or shall neglect to pay said taxes, municipal assessments and charges forthwith when the same become due and payable, the said party of the second part, its successors or assigns, may take out such policy or policies in its own name, and may pay

such taxes, municipal assessments and charges, and the premium or premiums paid therefor, and the sum or sums paid for such taxes, municipal assessments and charges as aforesaid, shall bear interest from the time of payment, and be added to and collected as part of the said principal sum and in the same manner.

And it is further agreed and understood, that in case default be made at any time in the payment of any one of said installments of debt or interest, or any part thereof, or of any taxes, municipal assessments, charges or premiums of insurance aforesaid, for days after the same falls due as aforesaid, the whole of the said debt and interest shall, at the option of the said party of the second part, its successors or assigns, thereupon become due and payable, and an action of Mortgage Foreclosure may be properly commenced upon this Indenture of Mortgage, and prosecuted to judgement, execution, and sale, for the collection of the whole amount of the said debt and interest remaining unpaid, together with all premiums of insurance, and all taxes, municipal assessments and charges, and all fees, costs and expenses of such proceedings, including attorney's commission of _____ per cent. And all errors in said proceedings, together with all stay of or exemption from execution, or extension of time

of payment which may be given by any Act or Acts of Assembly now in force, or which may be enacted hereafter, are hereby forever waived and released.

* * *

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

FIRST NATIONAL BANK of CENTRE HALL, Plaintiff	:	
-v-	:	Case No. 89-598
I. PARKER HUFF, Defendant	:	Mortgage Foreclosure

PETITION TO AMEND JUDGEMENT

* * *

5. As of June 1, 1993, defendant Huff owed to The First National Bank of Centre Hall, under the Note and Mortgage obligations forming the basis for this mortgage foreclosure action and the resulting Judgement, the amount of $228,099.82, exclusive of counsel fees incurred from January 18, 1993, to-date.

* * *

7. During the period from January 18, 1993, through July 14, 1993, the Centre Hall Bank incurred counsel fees of $2,653.95 in connection with debtor's attempts to avoid liquidation of his property as ordered by the Bankruptcy Court on

October 8, 1992. A copy of the invoice reflecting these costs is attached hereto as Exhibit D.

* * *

Exhibit C

PAYOFF AMOUNTS:	
PRINCIPAL BALANCE	$142,459.06
INTEREST THROUGH 6/1/93	$ 71,026.12
COSTS AS OF 6/1/93	$ 14,614.64
TOTAL:	$228,099.82

DATE - AMOUNT OF CHECK - PAYABLE TO:

5/27/93	$ 359.80	FILIUS & MCLUCAS REPORTING
3/8/93	400.00	RUDOLPH REALTY
1/19/93	1,962.15	MILLER KISTLER & CAMPBELL
12/19/91	193.92	CENTRE CO. MUTUAL FIRE
12/4/91	4,482.42	MILLER KISTLER & CAMPBELL
5/29/91	175.00	RUDOLPH REALTY
3/8/91	3,228.60	MILLER KISTLER & CAMPBELL
3/8/91	796.00	GEO DECISIONS INC.
3/8/91	175.00	RUDOLPH REALTY
1/7/91	200.00	MILLER KISTLER & CAMPBELL
6/13/90	941.75	GARY KUNES, SHERIFF
2/13/90	900.00	MILLER KISTLER &

1/9/90	800.00	CAMPBELL MILLER KISTLER & CAMPBELL
TOTAL	$14,614.64	

(Photo copies of eight checks from First National Bank Of Centre Hall)

* * *

Exhibit D

Enclosed please find my statement for services rendered in connection with the bankruptcy proceedings involving Parker Huff, during the period from January 18, 1993 through July 14, 1993. The attorney fees have been billed at our rate of $75.00 per hour, and the enclosed statement sets forth the costs that we have advanced to this matter. Please contact me should you have any questions or need additional information in order to process this statement.

* * *

Please Pay This Amount $2,653.90

01/18/93 TGB - SERVE ORDER: DRAFT AND FILE OBJECTION TO CONTINUING STAY - .75 hr

02/10/93 TGB - STUDY ANSWER RECEIVED;

CALLS TO COURT AND G. FULTZ; LETTERS TO TRUSTEE AND G. FULTZ RE: HEARING: CHECK HUFF PROPERTY OWNERSHIP - 1.40 hr

02/16/93 TGB - ANALYZE DEEDS AND MAPS - .60 hr

02/17/93 TGB - STUDY LETTER RECEIVED RE: LAND PURCHASE ; LETTER RESPONSE - .30 hr

02/19/93 TGB - STUDY SUBDIVISION MAPS; CALLS TO C. SHIELDS AND R. RUDY - .40 hr

02/22/93 TGB - MEETING WITH R. RUDOLF RE: APPRAISAL UPDATE - .75 hr

02/23/93 TGB - STUDY LETTER RECEIVED: CALLS TO BANK and COURT- .25 hr

03/01/93 SLE - PREPARE AND LABEL EXHIBITS: DISBURSE MONEY TO TAX CLAIM, RECORDER.PROTHONOTARY'S OFFICE - 2.50 hr

03/01/93 TGB - PREPARE EXHIBITS: OBTAIN LIEN CERTIFICATES: STUDY NEW APPRAISAL: CALLS TO G. FULTZ AND R. RUDY - 3.40 hr

03/02/93 TGB - PREPARE PRESENTATION AND REPRESENT BANK AT COURT HEARING ON MOTION FOR RELIEF FROM STAY - 9.00 hr

03/03/93 TGB - CALL FROM TRUSTEE RE: STATUS; LETTER TO G. FULTZ - .40 hr

03/16/93 TGB - STUDY MOTION AND NOTICE RECEIVED; LETTER TO G. FULTZ - .60 hr

03/17/93 TGB - STUDY MOTION: DRAFT OPPOSITION; LETTERS TO COURT - 1.75 hr

03/23/93 TGB - REVISE AND FILE OPPOSITION TO MOTION - .75 hr

03/30/93 TGB - CALL AND LETTER FROM TRUSTEE - .30 hr

04/05/93 TGB - CALL TO TRUSTEE - .25 hr

04/13/93 TGB - STUDY LETTER RECEIVED; LETTER TO C. BREON - .40 hr

04/28/93 TGB - CALLS TO COURT. COUNSEL AND BANK RE: RESCHEDULED HEARING - .30 hr

04/30/93 TGB - STUDY NOTICE RECEIVED: LETTER TO G. FULTZ - .20 hr

05/08/93 TGB - PHONE CALLS TO COURT AND COURT REPORTER RE: DECISION STATUS - .40 hr

05/20/93 TGB - LETTER TO G. FULTZ RE: INVOICE - .25 hr

06/02/93 TGB - STUDY AFFIDAVITS RECEIVED: REPRESENT BANK AT COURT HEARING - 6.00 hr

06/21/93 TGB - STUDY MEMORANDUM AND ORDER:

CALL AND LETTER TO G. FULTZ - .75 hr

06/25/93 TGB - STUDY DISCHARGE RECEIVED: LETTER TO G. FULTZ - .25 hr

07/11/93 TGB - STUDY APPEAL: RESEARCH PROCEDURE; LETTER TO G. FULTZ: DRAFT PETITION TO AMEND Judgement - 2.20 hr

07/14/93 TGB - STUDY NOTICE RECEIVED: LETTER TO G. FULTZ: DRAFT DESIGNATION OF RECORD CONTENTS: LETTER TO COURT - 1.20 hr

Total Fees Billed...35.35 hr $2,551.25

---Costs Advanced---

01/13/93 COSTS ADVANCED MILEAGE TRAVELED TO SUNBURY FOR CREDITORS' MEETING (75 MILES)
- $.25 ea $18.75

01/14/93 COSTS ADVANCED DUPLICATED COPIES OF MOTION FOR RELIEF FROM AUTOMATIC STAY (44 COPIES)
- $.15 ea $6.60

03/01/93 COSTS ADVANCED DUPLICATED COPIES (72) OF EXHIBITS
- $.15 ea $10.80

03/02/93 COSTS ADVANCED DUPLICATED EXHIBITS FOR COURT (30 COPIES) - $.15 ea $4.50

03/23/93 COSTS ADVANCED DUPLICATED COPIES OF OPPOSITION OF FIRST NATIONAL BANK OF CENTRE HALL TO MOTION OF R.E. BREON & SONS TO CONVERT FROM CHAPTER 7 TO 11 (42 COPIES) - $.15 ea $6.30

06/02/93 COSTS ADVANCED MILEAGE TRAVELED TO HARRISBURG FOR HEARING (200 MILES) - $.25 ea $50.00

06/02/93 COSTS ADVANCED PARKING FEE WHILE IN HARRISBURG FOR HEARING - $2.00

07/19/93 COSTS ADVANCED DUPLICATED COPIES OF APPELLEE'S DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL (25 COPIES) - $.15 ea $3.75

Total Costs Advanced: $102.70

Current fees and costs: $2,653.90

For Professional Services: $2,653.90

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA
MORTGAGE FORECLOSURE

FIRST NATIONAL BANK of CENTRE HALL, Plaintiff	:	
-v-	:	No. 1989-598
I. PARKER HUFF, Defendant	:	

Petition to Set Aside Sheriff's Sale and Exceptions to Proposed Distribution

* * *

2. The Defendant, I. Parker Huff, filed a voluntary petition in Bankruptcy on April 22, 1994 in the United States Bankruptcy Court for the Middle District of Pennsylvania that was assigned case number 1-94-00633. An Automatic Stay was invoked upon filing. Notice was given to the first, second, and third mortgage holders on May 2, 1994 and defendant's unsecured creditors on May 5, 1994. Telephone notice was given to Tracey Benson, Esquire and Deputy John Peters of the Centre County Sheriff's Office on April 25, 1994.

3. Advertising for the Sheriff's Sale appeared in the Centre Daily Times on April 27, May 4, and May 11, 1994.

4. The Plaintiff's in this case were listed as a creditor in the Bankruptcy and received notice. The Plaintiff's filed for Relief from the Automatic Stay on April 28, 1994.

5. Creditor's of the Defendant, including the first, second and third mortgage holders all received notice of the Bankruptcy and Automatic Stay.

6. An emergency telephone conference was scheduled by the Bankruptcy Court at the request of the Plaintiff Bank and held on May 18, 1994. No notice was given to any creditor, except the Plaintiff, first mortgage holder.

7. An order granting the Bank's motion for relief from the automatic stay was entered on May 19, 1994. No notice was given to the second or third mortgage holders or any other creditor except the plaintiff bank first mortgage holder.

8. Under the provisions of 11 U.S.C. §362 a petition in bankruptcy operates as a stay of any act to create, perfect, or enforce any lien against property of the estate.

9. The advertising of the sale was a legal nullity by virtue of the automatic stay, thereby voiding the sale. Advertis

ing is required by Pa.R.C.P. 3129.2(d).

* * *

Excerpts from United States Bankruptcy Court in and for The Middle District of Pennsylvania Docket for Case No. 90-00917-RJW - I. Parker Huff Debtor

* * *

Date	Docket Number	Entry
07/02/90	#13	PRAECIPE FOR ENTRY OF APPEARANCE with CERTIFICATE OF SERVICE by Tracey G. Benson, Esq. on behalf of The First National Bank of Centre Hall. mrp
07/27/90	#20	PRAECIPE FOR ENTRY OF APPEARANCE of Tracey G. Benson, Esquire, on behalf of R. E. Breon & Sons, Inc. Profit Sharing Trust;filed with CERTIFICATE OF SERVICE. mrp
08/03/90	#21	REPLY IN OPPOSITION TO DEBTOR'S MOTION FOR AUTHORIZATION TO SELL PROPERTY FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES with CERTIFICATE OF SERVICE filed. drr (filed by The First National Bank of Centre Hall) 9-13-90 mrp
11/06/90		HEARING ON OBJ. TO 11 SALE NOT HELD - matter continued generally per Tracey Benson, Esq. cls

01/10/91 #38 COMPLAINT OF THE FIRST NATIONAL BANK OF CENTRE HALL TO DIS MISS OR CONVERT CHAPTER 11 CASE. 1/14/90 Check to be returned. 1/17/91 Check returned to attorney. mrp

04/22/91 #54 MOTION OF R. E. BREON & SONS, INC. PROFIT SHARING TRUST TO DISMISS OR CONVERT CHAPTER 11 CASE with CERTIFICATE OF SERVICE. mrp

06/07/91 #59 PRAECIPE TO WITHDRAW MOTION to Dismiss or Convert, filed by R.E. Breon & Sons, Inc. with CERTIFICATE OF SERVICE. mrp

06/12/91 HEARING HELD ON MOTION TO DISMISS OR CONVERT BY 1st Nation. test. taken - not ordered - Filius and McLucas Reporting - matter cont. till July 25, 1991 at 9:30 a.m. cls

07/22/91 Hearing rescheduled to August 20, 1991 at 9:00 a.m., re: Motion To Dismiss or Convert. mrp

08/20/91 HEARING HELD ON MOTION TO DISMISS OR CONVERT BY 1st NATIONAL - test. taken - transcript ordered - briefs to be filed 30 days after transcript - court to render decision- Filius and McLucas Reporting. cls

11/04/91 #65 BRIEF IN SUPPORT OF MOTION TO DISMISS OR CONVERT CHAPTER 11 CASE with CERTIFICATE OF SERVICE filed by The First National Bank of Centre Hall. drr

11/04/91 #66 THE FIRST NATIONAL BANK OF CENTRE HALL'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW re: Motion to Dismiss or Convert Chapter 11 Case with CERTIFICATE OF SERVICE filed. drr

03/31/92 #74 MOTION OF THE FIRST NATIONAL BANK OF CENTRE HALL FOR RELIEF FROM AUTOMATIC STAY with CERTIFICATE OF SERVICE filed. paid 3/31/92 #040-935 $60.00 drr

06/24/92 #88 CORRESPONDENCE regarding the status of various contested matters re: The First National Bank of Centre Hall filed by counsel for The First Natl. Bank of Centre Hall. drr

09/21/92 #99 MEMORANDUM OF THE FIRST NATIONAL BANK OF CENTRE HALL IN OPPOSITION TO DEBTOR'S MOTION FOR EXTENSION OF TIME TO OBTAIN COUNSEL with CERTIFICATE OF SERVICE filed. drr

10/05/92 #101 CORRESPONDENCE received on September 18, 1992 regarding Obtaining of Counsel, Motion to Dismiss or

Convert and Motion for Relief from Automatic Stay of Centre Hall Bank filed by counsel for Centre Hall Bank. drr

10/07/92 #107 CORRESPONDENCE dated October 6, 1992 from Atty. Benson regarding the payment of junior unsecured creditors. las

01/19/93 #115 MOTION OF THE FIRST NATIONAL BANK OF CENTRE HALL FOR RELIEF FROM AUTOMATIC STAY filed with CERTIFICATE OF SERVICE re: Auto. Stay First National Bank of Centre Hall. ($60.00 fee paid, 01/19/93, rec. #503307) las T129

01/25/93 #117 CERTIFICATE OF SERVICE re: Auto. Stay-First National Bank of Centre Hall. las

01/25/93 #118 OBJECTION TO CONTINUANCE OF STAY filed with CERTIFICATE OF SERVICE re: Auto. Stay-First National Bank of Centre Hall. las

03/02/93 HEARING HELD ON AUTO STAY - RE: First National Bank - test. taken - not ordered - matter ready for decision - Filius and McLucas Reporting. cls

03/24/93 #122 OPPOSITION OF THE FIRST

NATIONAL BANK OF CENTRE HALL TO MOTION OF R.E. BREON & SONS, INC. PROFIT SHARING TRUST, TO CONVERT FROM CHAPTER 7 TO CHAPTER 11 filed with CERTIFICATE OF SERVICE re: Conversion to Chapter 7. las

03/24/93 #124 CORRESPONDENCE dated March 23, 1993 from Atty. Benson re: Auto. Stay - National Bank of Centre Hall. las

06/02/93 HEARING HELD ON MOTION TO CONVERT - testimony taken - matter ready for decision - testimony taken - not ordered - Filius and McLucas Reporting cls

06/18/93 #129 ORDER that the relief requested by R.E. Breon & Sons, Inc., Profit Sharing Trust to Convert from Chapter 7 to Chapter 11 is DENIED and that the relief from the stay requested by the First National Bank of Centre Hall is GRANTED and the automatic stay is LIFTED with respect to real property. (cc: debtor, Trustee, Benson, Breon) las

06/24/93 #130 DISCHARGE OF DEBTOR(S). las

* * *

Excerpts from United States Bankruptcy Court in and for The Middle District of Pennsylvania Docket for Case No. 94-00633-RJW - I. Parker Huff Debtor

Date	Docket Number	Entry
04/22/94	#1	VOLUNTARY PETITION under Chapter 11 & Mailing Matrix also lists of 20 largest creditors. (Fee Pd. Rec#508868 $800.00) [EOD 04/25/94] [DS] (9/42 pgs) [EOD 05/09/94] [SP]
04/28/94	#4	MOTION for relief from stay by FIRST NATIONAL BANK OF CENTRE HALL paid 4/28/94 $60.00 #508915 [Disposed] [EOD 04/28/94] [DR]
05/03/94	#8	MOTION to dismiss OR TO VACATE ORDER FOR RELIEF by The First National Bank of Centre Hall Re: Item #1. [Disposed] [EOD 05/03/94] [DR]
05/04/94	#11	NOTICE TO CREDITORS FIXING JUNE 1, 1994 AS ANSWER/OBJECTION DATE AND FIXING HEARING on 06/06/94 at 2:00 p.m. at FED.BLDG., BKRPTCY CTRM. (3RD FLR.), THIRD & WALNUT STS., HARRISBURG, PA. NOTICE TO CREDITORS FIXING JUNE 1, 1994 ASANSWER / OBJECTION DATE AND FIXING HEARING on 06/06/94 at 2:00 p.m. at FED.BLDG., BKRPTCY CTRM. (3RD FLR.), THIRD &

WALNUT STS., HARRISBURG, PA. 17108
Re: Item #8.

05/19/94 #22 ORDER granting relief from stay [EOD 05/20/94] [DR]

Supreme Court, U.S.
FILED
APR 2 1997
OFFICE OF THE CLERK

(2)

No. 96-1388

In The

Supreme Court of the United States

October Term, 1996

I. PARKER HUFF,

Petitioner,

vs.

FIRST NATIONAL BANK OF CENTRE HALL,
Now Known as:
NORTHWEST SAVINGS BANK,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

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Dated: April 2, 1997

70857 (800) 3 APPEAL • (800) 5 APPEAL • (300) BRIEF 21 Lutz Appellate Services, Inc.

QUESTION PRESENTED

None of the questions as stated by petitioner is presented in this case. Because the Petition is premised upon dissatisfaction with determinations of fact, and with the application of Pennsylvania law to those facts, the question presented might more accurately and simply be stated:

1. Where the bankruptcy court issued orders which authorized the Bank to proceed with foreclosure and execution proceedings against petitioner's mortgaged property in the Court of Common Pleas of Centre County, Pennsylvania, are the state court proceedings reviewable on writ of certiorari where petitioner failed to raise or preserve any issues of federal law in the state or federal courts below?

STATEMENT PURSUANT TO RULE 29.6

In 1996, all of the outstanding stock in the respondent, The First National Bank of Centre Hall was acquired by Northwest Savings Bank. Northwest Savings Bank has two wholly-owned corporate subsidiaries, as follows: Northwest Mortgage Corporation; and Northwest Consumer Discount Company.

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This case turns entirely upon questions of Pennsylvania law pertaining to execution against real estate pledged as security for a loan. Both the state trial court and the Superior Court of Pennsylvania reviewed petitioner's objections to the execution proceedings, and affirmed the validity of the execution sale. Because this case raises no important or novel questions of federal law, the case does not warrant review by this Court.

None of the considerations governing review on certiorari set forth in Supreme Court Rule 10 are present in this case. The decision below is not in conflict with the decision of another court of appeals on the same matter, or in conflict with applicable decisions of this Court. Nor did the Superior Court of Pennsylvania decide any important question of federal law in a way that conflicts with a decision by a state court of last resort. Finally, the courts below did not decide any important question of federal law "that has not been, but should be, settled by this Court."

STATEMENT OF JURISDICTION

The judgment of the Superior Court of Pennsylvania was entered on December 21, 1995. (A. 1a).[1] Petitioner's request for reargument in that court was denied on March 1, 1996. (A. 10a). The petition for allowance of appeal to the Supreme Court of Pennsylvania was denied without opinion on August 27, 1996. (A. 11a). Although petitioner seeks to invoke the jurisdiction of this Court under 28 U.S.C. § 1257(a), petitioner failed to raise

---

1. To the extent that petitioner has included relevant opinions and orders in his Appendix, reference will be made thereto. Because petitioner has not included in his Appendix the orders and opinions issued by the bankruptcy court and the United States District Court for the Middle District of Pennsylvania, reference will be made to the Supplemental Reproduced Record, *e.g.*, (S.R. 1b) filed by respondent in the Superior Court of Pennsylvania.

below any issues pertaining to the validity of any statute of the United States, or any contention that any Pennsylvania statute was repugnant to the Constitution, treaties, or laws of the United States. To the extent that the orders of the bankruptcy court (S.R. 117b, 143b and 149b) or the district court (S.R. 126b, 127b, 150b and 153b) involved any federal questions, petitioner failed to appeal those determinations. Respondent urges that petitioner has not properly invoked the certiorari jurisdiction of this Court.

STATUTE INVOLVED

Petitioner never raised or litigated below any issues arising under the United States Constitution. Respondent urges that there are no constitutional provisions involved. Because the petitioner never exhausted his appeals of the bankruptcy court's orders lifting the automatic stay to permit the pursuit of state court foreclosure and execution proceedings against the mortgaged property, the state courts did not consider or decide any questions arising under the federal bankruptcy laws. Accordingly, the following statute is involved:

28 U.S.C. § 1257(a):

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties

or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

Petitioner, I. Parker Huff ("Huff") borrowed $150,000 from respondent The First National Bank of Centre Hall ("Centre Hall Bank" or the "Bank") on November 21, 1985. To secure that loan, Huff provided the Bank with a first mortgage on real estate, purchased with the loan proceeds. Between September, 1989 and May 24, 1994, Huff made no payments toward that loan, but succeeded in living on the property for free, by availing himself of two (2) separate bankruptcy filings, as well as various collateral federal and state court proceedings attendant thereto. Huff's luck ran out when the mortgaged property was sold by the Sheriff of Centre County, Pennsylvania, on May 24, 1994.

A. The Loan

This saga began, ironically enough, with petitioner's purchase of the mortgaged real estate at an execution sale conducted by the Sheriff of Centre County, Pennsylvania. Huff sought financing for the acquired property from The First National Bank of Centre Hall, and provided a first mortgage to the Bank on the real estate thus acquired.

From the inception of the loan, Huff was unable to make the monthly payments. The Centre Hall Bank began foreclosure proceedings on numerous occasions between March, 1986 and October, 1989. Huff was able to avoid execution by making belated payments. Prior to the execution sale here at issue, the Bank last received funds for application toward Huff's loan in September, 1989.

B. The First Bankruptcy

In order to avoid an execution sale of his real estate scheduled to take place on June 5, 1990, Huff filed a petition seeking protection of the bankruptcy court under Chapter 11, on June 4, 1990. Huff sought to reorganize his affairs by using the bankruptcy to facilitate a subdivision of the farm property on which the Bank held the first mortgage. After two years of bankruptcy protection, however, it became apparent that Huff had neither the means, nor the ability, the effectuate a subdivision of that farm property. It was also clear that Huff did not have the ability to make payments toward the Bank's loan in the absence of any subdivision scheme. Accordingly, an order was issued on October 8, 1992, by the United States Bankruptcy Court for the Middle District of Pennsylvania, converting Huff's Chapter 11 case to a Chapter 7 liquidation. (S.R. 107b). Along with the order, the bankruptcy judge issued a memorandum detailing the reasons for the conversion. (S.R. 101b). By October of 1992, Huff's secured debt to the Bank had grown from the original amount of $150,000 to more than $182,000.

Huff continued to assert his right to a Chapter 11 proceeding, and litigated that issue in the bankruptcy court for nearly two more years. On June 18, 1993, the bankruptcy court rejected all of Huff's arguments, and issued an order which lifted the automatic stay with respect to real property on which the Bank possessed the first mortgage lien. This order permitted the Centre Hall Bank to proceed with its collection remedies under state law, as follows:

ORDER

AND NOW, this 18th day of June, 1993,

* * *

> Upon consideration of the motion of the First National Bank of Centre Hall for relief from the automatic stay, for the reasons stated in the accompanying Memorandum, it is hereby ordered that the relief from the stay requested in said motion is GRANTED, and the automatic stay is hereby LIFTED with respect to real property of the estate in which the Bank possesses a perfected security interest.
>
> BY THE COURT:
>
> Robert J. Woodside
> Chief Bankruptcy Judge
>
> HARRISBURG, PENNSYLVANIA

(S.R. 117b).

At about the same time, by date of June 24, 1993, the bankruptcy court issued a discharge to Huff. (S.R. 118b). As found by the bankruptcy court, Huff's three years of bankruptcy protection had caused the amount owed to the Bank to balloon to more than $228,000, as of June 1, 1993. (S.R. 111b).

Huff appealed the foregoing decision of the bankruptcy court to the United States District Court for the Middle District of Pennsylvania, and also sought supersedeas while that appeal was pending. The supersedeas was denied by memorandum and order issued by The Honorable James F. McClure, Jr., on February 16, 1994. (S.R. 119b-126b). District Judge McClure subsequently affirmed the rulings of Bankruptcy Judge Woodside, by order issued on May 6, 1994. (S.R. 127b). Huff did not appeal to the United States Court of Appeals for the Third Circuit.

C. The Collection

When the Centre Hall Bank finally obtained the right to proceed with state court collection remedies following Huff's three years in bankruptcy, the Bank moved to amend its judgment in the state trial court to reflect the current amount then owed. After considering Huff's opposition thereto, the state trial court entered an order amending the judgment. (A. 23a).

In response to Huff's petition to strike off amended judgment, the trial court entered an order on November 5, 1993, denying that petition. (A. 19a). In its opinion, the state trial court recognized that the Bank's pursuit of state law remedies against the mortgaged real estate was specifically authorized by the bankruptcy court's June 18, 1993, order. (A. 21a).

Following denial of Huff's motion for stay pending appeal before the United States District Court for the Middle District of Pennsylvania (S.R. 126b), the Bank obtained a writ of execution in the state trial court to facilitate sale of the mortgaged real estate.

D. The Second Bankruptcy

In order to avert the execution sale scheduled for May 24, 1994, Huff filed a second Chapter 11 bankruptcy petition on April 22, 1994. The Bank immediately moved for an order to dismiss that bankruptcy, or to lift the automatic stay, urging that the bankruptcy filing was undertaken in bad faith in order to avoid an execution sale previously sanctioned by the bankruptcy court's June 18, 1993, order. (S.R. 133b). The United States Trustee filed a similar motion on or about May 2, 1994. (S.R. 140b). Following a telephone hearing with the parties, the bankruptcy judge granted the Bank's motion with the following order:

* * *

For the foregoing reasons, it is hereby ORDERED that the relief requested in the Bank's motion for relief from the automatic stay is hereby GRANTED, and the Sheriff's Sale of the Property set for May 24, 1994, shall proceed as scheduled.

BY THE COURT:

Robert J. Woodside
Chief Bankruptcy Judge

HARRISBURG, PENNSYLVANIA
DATED: MAY 19, 1994

(S.R. 143b-148b).

Huff's motion for emergency reconsideration of the bankruptcy court's order lifting the automatic stay, was denied. (S.R. 149b). Huff subsequently sought reconsideration before the United States District Court for the Middle District of Pennsylvania, which was denied by order of May 24, 1994. (S.R. 150b-152b). Huff's appeal of the bankruptcy court's order permitting the state court execution sale to proceed was subsequently denied by order of the district court on June 16, 1994. (S.R. 153b). Huff never perfected any appeal of that order to the United States Court of Appeals for the Third Circuit.

E. The Execution Sale

On May 24, 1994, the execution sale of Huff's mortgaged real estate was held by the Sheriff of Centre County, Pennsylvania. The farm property comprising approximately 100

acres was purchased by a third-party bidder. A smaller tract owned by Huff and also subject to the Bank's mortgage, was purchased by the Bank for the sheriff's costs, and subsequently conveyed to a third-party buyer. The Centre Hall Bank has never sought to impose personal liability against Huff for any deficiency judgment resulting from the execution sale of the mortgaged property.

On the same day that the sheriff recorded the deeds of sale, Huff filed a petition seeking to set aside the sheriff's sale in the state trial court. The opinion and order issued by the state trial court below on July 28, 1994, upheld the execution sale, and denied Huff's petition and exceptions. (A. 12a-18a).

Huff appealed to the Superior Court of Pennsylvania, which affirmed the trial court in an unpublished opinion. *First National Bank of Centre Hall v. Huff*, No. 810HBG93 & No. 583HBG94 (Pa. Super. Dec. 21, 1995). (A. 1a). Huff's petition for allocatur to the Supreme Court of Pennsylvania was denied on August 27, 1996. (A. 11a).

REASONS FOR DENYING THE WRIT

I.

THE DECISION OF THE SUPERIOR COURT OF PENNSYLVANIA, AFFIRMING THE MORTGAGE FORECLOSURE AND EXECUTION PROCEEDINGS IN THE STATE TRIAL COURT, IS NOT REVIEWABLE PURSUANT TO 28 U.S.C. § 1257(a) BECAUSE THE PETITIONER FAILED TO RAISE OR PRESERVE ANY ISSUE OF FEDERAL LAW IN CONNECTION WITH THOSE PROCEEDINGS.

The discretionary jurisdiction of this Court to review final judgments or decrees rendered by state courts, is circumscribed

by 28 U.S.C. § 1257(a). Certiorari jurisdiction exists only where the highest court of a state has drawn into question a statute of the United States; where a state statute is drawn into question on the ground of its being repugnant to the Constitution or laws of the United States; or where other federal issues have been decided by the state court. None of those circumstances are present in connection with the state court proceedings below.

This Court wisely refuses to review judgments rendered by the highest court of a state unless a federal question has been both raised, and decided, in the state court below.

> It is a long-settled rule that the jurisdiction of this Court to re-examine the final judgment of a state court can arise only if the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system.

Webb v. Webb, 451 U.S. 493, 496-97 (1981). *See also Yee v. City of Escondido*, 503 U.S. 519, 523-33 (1992) (in reviewing judgments of state courts pursuant to 28 U.S.C. § 1257, the Court will refuse to consider claims that were not raised or addressed below).

To the extent that the petitioner now seeks to raise constitutional arguments for the first time in this Court, he may not do so because they were never raised, or adjudicated, below. *Beck v. Washington*, 369 U.S. 541, 549-53 (1962) (because petitioner failed to argue equal protection in state court, question was not before this Court). Nor can petitioner now raise questions pertaining to the propriety of the state law execution proceedings, as being inconsistent with federal bankruptcy law, where the execution proceedings were specifically authorized by orders of the bankruptcy court, as affirmed by the district court.

Contrary to the assertions contained in Huff's petition, no federal constitutional issues were ever raised in connection with the extensive proceedings below, either in the bankruptcy court, in the district court, or in the Pennsylvania state courts. The proceedings in the state trial court and on appeal to the Superior Court of Pennsylvania, turned on the application of Pennsylvania law to factual determinations made in the state trial court. To the extent Huff attempted to argue that state law execution proceedings were inconsistent with his discharge in bankruptcy, no federal question was raised or adjudicated because those remedies were specifically authorized by two (2) separate orders issued by the bankruptcy court. Huff failed to pursue an appeal of either bankruptcy court determination to the court of appeals.

The state courts merely concluded that the discharge of personal debts issued by the bankruptcy court did not preclude execution proceedings against the mortgaged property under Pennsylvania law. The state courts recognized that the bankruptcy court had previously issued an order specifically authorizing the Centre Hall Bank to pursue its state law remedies against the mortgaged property. Both the state trial court and the Superior Court of Pennsylvania, also recognized that under Pennsylvania law, a mortgage foreclosure action is in essence an *in rem* proceeding directed against the property, rather than a collection proceeding directed against the individual debtor. These were purely state law determinations that cannot trigger the certiorari jurisdiction of this Court.

Huff's argument that the execution sale was conducted in violation of the automatic stay which was issued on his second bankruptcy filing, also fails to invoke the certiorari jurisdiction of this Court under 28 U.S.C. § 1257(a). Following Huff's filing of a second bankruptcy proceeding in April of 1994, the bankruptcy court issued an order on May 19, 1994, which provided that "the Sheriff's Sale of the Property set for May 24,

1994, shall proceed as scheduled." (S.R. 148b). Despite Huff's state court arguments to the contrary, neither the state trial court, nor the Superior Court of Pennsylvania, adjudicated any issues of federal bankruptcy law, because those issues had been decided by the bankruptcy court and the district court. When the bankruptcy court issued its order authorizing the execution sale to proceed as scheduled, the state courts were not required to determine, and did not consider, whether the execution sale in any way violated the federal bankruptcy laws.

II.

THE STATE LAW COLLECTION PROCEEDINGS AGAINST THE PETITIONER'S REAL ESTATE ARE NOT REVIEWABLE ON WRIT OF CERTIORARI, WHERE THE PETITIONER FAILED TO EXHAUST HIS APPEALS OF THE BANKRUPTCY COURT ORDERS WHICH AUTHORIZED THE COLLECTION TO PROCEED IN THE STATE COURT, AS REQUIRED BY 28 U.S.C. § 1254.

To the extent that the petitioner attempted to adjudicate bankruptcy law issues in the state court proceedings, the state courts were correct in not considering those issues on their merits. The bankruptcy court entered two separate orders which authorized The First National Bank of Centre Hall to proceed with its state court collection remedies. (S.R. 117b & 148b). Huff did appeal to the United States District Court for the Middle District of Pennsylvania, in connection with the bankruptcy court's June 18, 1993, order lifting the automatic stay to facilitate state court collection proceedings against the mortgaged property. When that appeal was denied, however, Huff never perfected an appeal to the United States Court of Appeals for the Third Circuit. The bankruptcy court's order lifting the stay to facilitate the Bank's pursuit of state court collection remedies against the mortgaged property, thus became final.

Similarly, Huff appealed the bankruptcy court's May 19, 1994, order authorizing the execution sale to proceed on May 24, 1994, to the United States District Court for the Middle District of Pennsylvania. As with the prior bankruptcy court order, Huff failed to perfect any appeal of the district court's decision affirming the bankruptcy court action. The petitioner may not now seek certiorari review of the issues decided by the bankruptcy court, because he failed to exhaust his appeals to the United States Court of Appeals for the Third Circuit, as required by 28 U.S.C. § 1254. *See, e.g., Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147 n. 2 (1970). ("Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them," even though they were presented to the district court and raised by the petition for certiorari).

III.

THE ISSUES RAISED IN THE PETITION ARE MOOT BECAUSE TITLE TO THE MORTGAGED PROPERTY PASSED TO THIRD PARTIES FOLLOWING THE MAY 24, 1994, EXECUTION SALE.

On June 14, 1994, the Sheriff of Centre County, Pennsylvania, recorded deeds to the property sold at the execution sale. Since that time, the property has been owned by third-party purchasers. Although Huff has doggedly pursued this litigation, he neither sought, nor obtained, any timely supersedeas of the orders issued by either the bankruptcy court, or the state trial court, which resulted in conveyance of the mortgaged property to third-party purchasers. Because nearly three years have elapsed since Huff was dispossessed of the property, the issues raised in his petition are moot.

It has long been recognized that the federal courts lack

jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies for which a litigant can receive redress through a favorable judicial decision. *Iron Arrow Honor Society v. Heckler*, 464 U.S. 67 (1983). In the specific context of mortgage foreclosure sales, the federal courts have often concluded that the completion of a foreclosure sale to a third party moots the appeal from any underlying order permitting the foreclosure, because no meaningful remedy is available. *See Matter of Lloyd*, 37 F.3d 271, 273 (7th Cir. 1994) (sale of bankrupt's farmland in the absence of a stay pending appeal mooted the appeal to the extent that debtor sought return of the land); *Oakville Devel. Corp. v. FDIC*, 986 F.2d 611 (1st Cir. 1993) (foreclosure sale to a third party mooted the appeal from dissolution of injunction against sale); *In Re: March*, 988 F.2d 498, 499 (4th Cir. 1993), *cert. denied*, 510 U.S. 864 (1993) (sale at foreclosure mooted the appeal from the order permitting the foreclosure).

Here, all of the issues raised by Huff in his petition pertain to the execution sale of the mortgaged property in May of 1994. Because title to that property passed to third-party purchasers for value, nearly three years ago, there is no basis for fashioning any effective relief. Moreover, because the bankruptcy court concluded that Huff had no equity in the mortgaged property (S.R. 114b), his standing to litigate the issues raised in his petition, is suspect.

CONCLUSION

The bankruptcy court was correct in authorizing The First National Bank of Centre Hall to proceed with its collection remedies against the petitioner's real estate, pursuant to Pennsylvania law. In connection with those state court proceedings, Huff did not raise, and the Pennsylvania courts did not decide, any federal law issues. Nor did the petitioner exhaust his appeals of the bankruptcy court decisions within the federal judiciary. For these reasons, this Court lacks jurisdiction to review the claims raised by Huff. Accordingly, respondent The First National Bank of Centre Hall, now known as Northwest Savings Bank, respectfully requests that the Petition for Certiorari be denied.

Respectfully submitted,

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Dated: April 2, 1997

(3)

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No. 96-1388

In The

Supreme Court of the United States

October Term, 1996

I. PARKER HUFF,
Petitioner,

v.

FIRST NATIONAL BANK of CENTRE HALL,
Now Known as:
NORTHWEST SAVINGS BANK,
Respondant.

Petition For A Writ of Certiorari
To The Superior Court Of Pennsylvania

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

I. Parker Huff, Pro Se

258 Toftrees Avenue #115
State College, Pa. 16803
(814) 237-1984
Petitioner

Dated: April 9, 1997

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REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

The central issue presented to this Court is whether the Pennsylvania Appellate Court erred by not reversing the trial courts' judgement, where the trial court blatantly ignored the Permanent Injunction invoked by Discharge in Bankruptcy that totally prohibits creditors' Post-discharge inclusion of "unrelated discharged debts" in complaint to obtain judgement in mortgage foreclosure. While it is true the Bank's mortgage debt survives bankruptcy, the Bank is limited to the remedies of it's security agreement (B. 1b-3b) for collection and cannot go beyond that agreement to collect other discharged debts. This action not only opens the door to future attempts by over-zealous creditors to use "Creative Measures" to avoid the effect of discharge in bankruptcy and mask unlawful collection actions with lawful efforts; but, most importantly evidences the trial court's exercise of state laws and powers to violate the supreme law of the land and Congress's exclusive power to regulate Bankruptcy and directly conflicts with the Constitution and this Court's holdings in *KALB et ux. v. FEUERSTEIN et ux. KALB v.*

LUCE et al., 60 S.Ct. 343 at 346, *FMC Corp. v. Holliday*, 111 S.Ct. 403, 112 L.Ed.2d 356, appeal after remand 932 F.2d 959. and *Lamaster v. Keeler*, 123 US 376, 31 L Ed. 238, 8 S Ct. 197.

1. THE PETITION FOR WRIT OF CERTIORARI CONTAINS NO MISSTATEMENT OF FACTS

Contrary to the respondents claims, this petition seeks review of the state court judgement granted in violation of the "Permanent Injunction" arising from petitioner's prior discharge in bankruptcy, and NOT review of any bankruptcy court judgement. The relevant facts are stated as follows:

A. The bank obtained relief from the automatic stay on June 18, 1993 (B. 18b).

B. Petitioner obtained Discharge in bankruptcy on June 18, 1993 (B. 18b).

C. The bank filed Petition to Amend Judgement (including the unlawful claims that are the subject of this Petition for Writ) on August 5, 1993 (B. 4b-10b).

D. Petitioner answered Bank's petition and raised affirmative defense of

discharge in bankruptcy on September 13, 1993 (R.R. 65a-67a).

E. The trial Court granted judgement in favor of the Bank, including Bank's unlawful and void claims on September 17, 1993 (R.R. 68a).

F. Petitioner filed Petition to Strike Off Amended Judgement on October 4, 1993 (R.R. 69a-91a).

G. Trial Court denied Petition to Strike Off Amended Judgement on November 9, 1993 (R.R. 93a) with opinion at (R.R. 94a-95a).

H. The timely appeals to the Pennsylvania Superior and Supreme Courts followed.

Contrary to respondents contention, petitioner is "NOT" seeking review of any Bankruptcy Court Orders or Judgements.

2. THIS COURT PROPERLY HAS JURISDICTION OVER THIS PETITION PURSUANT TO 28 U.S.C. § 1257 AND SUPREME COURT RULE Number 10

The respondent is clearly confusing review of Bankruptcy court orders with the present issue of this petition, in that this petition for Writ of Certiorari is to

review the state court's exercise of control of local laws and powers to violate the constitutional power exclusively vested with Congress to regulate Bankruptcy,

> "State court's excuse for denial of federal right is not valid excuse if it is inconsistent with or violates federal law: supremacy clause forbids state courts to disassociate themselves from federal law because of disagreement with its contents or refusal to recognize superior authority of its source." U.S.C.A. Const. Art. 6, cl. 2. *Howlett By and Through Howlett v. Rose*, 110 S.Ct. 2430, 496 U.S. 356, 110 L.Ed.2d 332, on remand 571 So.2d 29.

and the supremacy of federal law that preempts the state court's jurisdiction and authority to grant the Judgement on review in this Petition.

> "Under supremacy clause, Bankruptcy Code and orders of bankruptcy court acting pursuant thereto controlled over otherwise valid state statutes, Supreme Court Rules, common-law principles, and state court

> orders involved in plaintiffs' attempts to enforce their state court judgments against trust subject to reorganization plan created pursuant to Bankruptcy Code, and thus, attempt by state Circuit Court to enforce judgments were void and could not support contempt order against trust for failure to pay pursuant to judgments." *Wehmeier v. UNR Industries, Inc.*, Ill.App. 4 Dist.1990, 574 N.E2d 1, 158 Ill.Dec. 207, 213 Ill.App.3d 1095.

This clearly satisfies 28 U.S.C. §1257 and poses the Federal questions pursuant to Supreme Court Rule 10, *Grovey - v - Townsend*, 295 U.S. 45, 55 S.. CT. 622, 79 L.Ed. 1292 (1935). Further, this Court clearly has the authority to rule on this Writ of Certiorari, pursuant to 28 U.S.C. §2106.

3. THIS WRIT OF CERTIORARI MUST BE GRANTED TO DETER AND PREVENT FURTHER ATTEMPTS TO CIRCUMVENT BANKRUPTCY LAWS IN UNLAWFUL DEBT COLLECTION.

Clearly the Bank in the present has gone far beyond lawful means in their attempt to collect "other discharged debts" (B. 4b-10b) in addition to their

mortgage debt (B. 1b). The state court has no authority to grant judgement in violation of Federal Bankruptcy Law,

> "No court, state or federal, may serve as an accomplice in the willful transgression of federal laws by which judges in every state are bound." *Lee v. State of Fla.*, Fla.1968, 88 S.Ct. 2096, 392 U.S. 378, 20 L.Ed.2d 1166.

where that very bankruptcy law VOIDS any judgement granted in violation thereof.

> "State courts are bound equally with the federal courts by the federal Constitution and laws." *Public Service Commission of Utah v. Wycoff Co.*, Utah 1952, 73 S.Ct. 236, 344 U.S. 237, 97 L.Ed. 291.

> "United States Supreme Court decisions construing and applying Federal Bankruptcy Act, 11 U.S.C.A. § 1 et seq., are binding on Georgia Supreme Court as precedents." *Morris Plan Bank of Ga. v. Simmons*, 1946, 39 S.E.2d 166, 201 Ga. 157.

CONCLUSION

It is clear that not only did the respondent take calculated measures to conceal their attempts to collect discharged debts in violation to federal law, now the respondent is attempting to cloud the issues properly raised in this Petition for Writ of Certiorari by setting forth meaningless issues that are not germane to federal questions rising from the state courts below. Clearly the respondent is attempting to cover up their unlawful actions, and side step the error of the trial court exceeding it's jurisdiction, and the appellant court's error in affirming the trial court's judgement.

Respectively, Petitioner Huff urges this Honcrable Court to Grant this Petition for Writ of Certiorari.

Respectfully submitted,

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Petitioner

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